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April 8, 2015

**RESS, EMAIL & COURIER**

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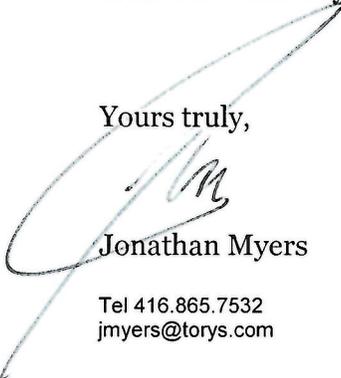
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Windlectric Inc. - Application for Leave to Construct Transmission Facilities  
(EB-2014-0300)**

We are counsel to Windlectric Inc. ("Windlectric") in respect of its application for leave to construct transmission facilities (EB-2014-0300). In accordance with Procedural Order No. 3 issued on February 24, 2015, Windlectric's Reply Submissions are attached hereto.

Yours truly,



Jonathan Myers

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cc: Mr. A. Tsopelas, Windlectric Inc.  
Intervenors

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S. O. 1998, c.15, Schedule B (the Act);

**AND IN THE MATTER OF** an application by Windlectric Inc. for an Order or Orders pursuant to sections 92, 97 and 101 of the Act granting leave to construct transmission facilities in Loyalist Township in the County of Lennox and Addington.

## **APPLICANT'S REPLY SUBMISSIONS**

**April 8, 2015**

### **A. INTRODUCTION**

1. These are the reply submissions of Windlectric Inc. ("**Windlectric**" or the "**Applicant**") in connection with its application to the Ontario Energy Board (the "**Board**") dated September 19, 2014 (the "**Application**") seeking leave to construct under Section 92 of the *Ontario Energy Board Act* (the "**OEB Act**") for an electricity transmission line and related facilities that will serve the Amherst Island Wind Energy Project (the "**Generation Project**") in Loyalist Township, in the County of Lennox and Addington.
2. In accordance with Procedural Order No. 3, the Applicant filed its Argument-in-Chief on March 16, 2015. Intervenor submissions were received on March 27, 2015 from the Association to Protect Amherst Island ("**APAI**"). Board staff submissions were also received on March 27, 2015, followed by a supplemental letter on March 31, 2015. No submissions were filed by the Independent Electricity System Operator.
3. In reply to the foregoing, Windlectric submits that:
  - (a) the Proposed Transmission Facilities will not impact the interests of consumers with respect to prices because the costs of the facilities will be borne by the Applicant and will not affect electricity transmission rates in Ontario. APAI's

submissions relating to the costs of the Generation Project, the Applicant's ability to bear the costs of the Generation Project, and the financial viability of the Generation Project are not relevant to the public interest test under Section 96 of the OEB Act;

- (b) the Proposed Transmission Facilities will not impact the interests of consumers with respect to reliability or the quality of electricity service. This is demonstrated by the Final SIA and CIA reports received from the IESO and Hydro One in respect of the Proposed Transmission Facilities. Moreover, it is expected that these conclusions will be confirmed - prior to the Board issuing a decision in this proceeding - by means of a minor technical amendment to the Final SIA report from the IESO and by a letter from Hydro One in respect of the Final CIA report;
- (c) the need for the Proposed Transmission Facilities has been demonstrated and, moreover, the facilities are consistent with the policies of the Government of Ontario regarding the promotion of the use of renewable energy sources because they will connect Windlectric's renewable generation facility, for which a FIT Contract has been awarded, to the grid. Although the Applicant has experienced delays in receiving its REA, this is not relevant to the question of whether Section 96(2)2 has been satisfied and, moreover, the Board's standard practice of making leave to construct conditional on all necessary permits and authorizations being obtained is an appropriate means of addressing any relevant concerns the Board may have in relation to the status of the REA; and
- (d) the Applicant has secured all necessary land rights for the Proposed Transmission Facilities, including a previously outstanding amendment to its agreement with the owner of the Project Substation property. Moreover, Windlectric's forms of land agreement are substantially in accordance with the Board's requirements. While the forms of agreement generally address the issue of decommissioning, the Applicant's responsibility for decommissioning will be further clarified in the final land agreements that will be prepared upon exercising its option rights.

4. Based on the test under Section 96 of the OEB Act, the Proposed Transmission Facilities are in the public interest and, therefore, leave to construct should be granted in accordance with the Application. Moreover, the Board should render its decision in this regard without delay. In doing so, the Board may wish to make leave to construct conditional on (1) the Applicant filing updated SIA and CIA reports (or letters from IESO and HONI confirming that the project will cause no adverse effects), and (2) the Applicant obtaining all permits and authorizations otherwise needed for the project.
5. Each of the foregoing submissions will be considered below. Unless otherwise defined, capitalized terms have the meanings as given in the Applicant's Argument-in-Chief.

**B. ISSUES RAISED BY BOARD STAFF**

6. The two issues arising from Board staff's submissions are (i) the appropriate treatment of Windlectric's SIA and CIA Reports, and (ii) the significance for this proceeding of Windlectric not having received its REA to date. Board staff also filed supplemental comments relating to Windlectric's forms of land agreement. As Board staff's supplemental comments were in response to the submissions from APAI, they will be addressed in Part C of these reply submissions.

**(a) Appropriate Treatment of Windlectric's SIA and CIA Reports**

7. Windlectric relies largely upon its SIA and CIA reports to demonstrate that the Proposed Transmission Facilities will have no adverse impacts on the interests of consumers with respect to reliability or the quality of electric service.<sup>1</sup> The IESO issued a Final SIA Report for the project on April 18, 2012 in which it concluded that the proposed connection is expected to have no material adverse impacts on the reliability of the integrated power system. In addition, Hydro One issued a Final CIA Report on April 16, 2012 in which it concluded that the proposed connection will not have any adverse impacts on existing Hydro One customers in the area.

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<sup>1</sup> Windlectric Inc., Argument-in-Chief, paras. 18-20.

8. One week before Windlectric's Argument-in-Chief was due, the Board issued a letter requesting that the Applicant provide either updated SIA and CIA reports or letters from the IESO and Hydro One confirming that the existing reports, as filed, remain accurate and that the conclusions remain valid despite the passage of time. As noted at paragraph 22 of its Argument-in-Chief, Windlectric made the corresponding requests to the IESO and Hydro One immediately, but had not received the requested materials by the time it filed its Argument-in-Chief. As such, Windlectric proposed that if the requested materials are not available at such time that the Board is otherwise ready to render its decision in this proceeding, leave to construct could be granted on the condition that Windlectric file such letters or updated reports, as applicable.
9. Since filing its Argument-in-Chief, Windlectric has been in contact with the IESO. The IESO has advised that a draft addendum to the Final SIA report has been prepared and is being finalized. Windlectric understands that the addendum will document minor technical changes made since the Final SIA report was issued and expects that the minor technical changes will not have any impact on the conclusions of the Final SIA report as filed in this proceeding. The IESO estimates that the addendum will be issued by mid-April. The IESO further advises that it has provided information to Hydro One about the minor technical changes and that, in response, Hydro One indicated that they do not expect any changes will be required to the Final CIA report. It is anticipated that, upon reviewing the SIA addendum, Hydro One will provide a letter to Windlectric confirming this. Once the SIA addendum and the letter from Hydro One have been obtained, Windlectric will promptly file these materials with the Board.
10. As such, it is anticipated that prior to rendering its decision the Board will have on the record in this proceeding not only the Final SIA and CIA reports from 2012, but also the minor SIA addendum from the IESO and the letter from Hydro One confirming that the Final CIA report remains accurate and the conclusions remain valid.
11. In the unlikely event that these materials cannot be filed with the Board by such time that the Board is otherwise ready to render its decision, the Applicant proposes that leave to construct could be granted on the condition that Windlectric promptly file such letters or

updated reports, as applicable, and that such letters or updated reports support the conclusions reached in the Final SIA and CIA reports that the proposed connection will have no adverse impacts on the IESO-controlled grid or Hydro One's customers. While this is similar to the approach suggested by Board staff at p. 5 of its submissions, Windlectric does not agree with staff's suggestion that the Final SIA and CIA reports should be treated as draft reports. To do so would be both inaccurate and unnecessary.

**(b) Significance of Windlectric Not Yet Having Received its REA**

12. As the Board is aware, one aspect of the limited public interest test under Section 96(2) of the OEB Act is that on an application under Section 92 the Board shall consider "where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources." On this aspect of the test, Windlectric noted in its Argument-in-Chief that it holds a FIT Contract for its planned wind energy generation facility and that the Proposed Transmission Facilities will further the Government of Ontario's objective of increasing the amount of renewable energy generation that forms part of Ontario's energy supply mix by enabling approximately 75 MW of renewable energy generation capacity to be conveyed to the IESO-controlled grid.
13. Provincial policy in this respect is evidenced by the *Green Energy and Green Economy Act, 2009* and the Long-Term Energy Plan, as well as the FIT Program developed by the former OPA in response to a September 24, 2009 directive from the Minister of Energy. The Board has previously relied on similar evidence in finding that proposed transmission facilities meet the test under Section 92(2).<sup>2</sup>
14. In its submissions, Board staff acknowledges that "granting leave to construct transmission facilities to any entity that holds a FIT contract is consistent with the

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<sup>2</sup> See Decision and Order, Bornish Wind LP, Kerwood Wind Inc. and Jericho Wind Inc. (EB-2013-0040/EB-2013-0041), November 12, 2013 at p. 8: "In the view of the Board, the transmission facilities will promote the use of renewable energy consistent with provincial policy by connecting wind farms to the provincial grid." See also Decision and Order, Suncor Energy Products Inc. (EB-2014-0022), February 26, 2015 at p. 5: "The OPA, administering the FIT program as required by the Government of Ontario, awarded a FIT contract to Suncor. This leads the Board to the conclusion that the approval of the proposed Transmission Facilities would be consistent with the policies of the Government of Ontario favouring the promotion of the use of renewable energy sources."

policies of the Government of Ontario as outlined in the Long Term Energy Plan and in line with Section 96(2) of the OEB Act.”<sup>3</sup> While this appears to be determinative of staff’s view on this aspect of the limited public interest test, staff then considers the status of Windlectric’s Renewable Energy Approval (“**REA**”) and argues that granting leave to construct to an applicant whose REA is considerably delayed would be premature because without the REA it will not be able to become a licensed generator. Staff further suggests that, if the Board grants leave to construct, it should be on the condition that it is not effective until the Applicant obtains the REA and notifies the Board.

15. Board staff’s submissions with respect to the status of Windlectric’s REA are not relevant to the question of whether the Proposed Transmission Facilities are consistent with the policies of the Government of Ontario for the promotion of the use of renewable energy sources. It is not clear why staff has raised its REA-related concerns in this context. In any event, Windlectric strongly disagrees with Board staff’s suggestion that it would be premature to grant leave to construct due to the REA delay Windlectric is experiencing.
16. The Board has previously considered the issue of the timing of a leave to construct proceeding relative to the timing of the environmental assessment process for a project. In particular, in its July 4, 2007 Decision and Order on Motion in Hydro One’s application for leave to construct the Bruce to Milton project (EB-2007-0050), the Board states as follows:

Both the Leave to Construct and the EA approval are required before the project may proceed, but neither process is completely dependent upon the other. There is the potential for conflicting results, but that potential arises no matter which process goes first. Therefore, the proponent and the agencies involved must manage these applications in an appropriate manner. As Hydro One pointed out, the Board’s leave to construct orders are conditional on all necessary permits and authorizations being acquired, including a completed EA. In this way, the Board ensures that it is not in contravention of the *EA Act* but allows for the timely consideration of applications before it.

The Board, however, is of the view that the two processes should not be significantly out of step. For example, the leave to construct

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<sup>3</sup> Board Staff Submission, March 27, 2015, p. 6.

would be significantly affected if the EA Terms of Reference did not include the same route. Therefore, the Board will proceed with the Leave to Construct application . . .

17. Based on the foregoing, the primary concern for the Board with respect to the timing of the leave to construct process relative to the timing of the environmental assessment process is that the project being approved in one regulatory process is consistent with the project being approved in the other regulatory process. As Windlectric stated in its Application, “the REA contemplates that the project will include transmission facilities and routing that is consistent with the Proposed Transmission Facilities and the routing described in this Application.”<sup>4</sup> This continues to be the case notwithstanding the delays that have occurred in obtaining the REA, which are unrelated to the routing or location of the Proposed Transmission Facilities. The two regulatory process are not out of step. Moreover, the Board’s standard practice of granting leave to construct conditional on all necessary permits and authorizations being acquired, including the REA, would enable the Board to effectively manage any relevant concerns it might have while allowing for the timely consideration of the Application.
18. Windlectric also takes issue with certain REA-related comments made by Board staff in its submissions under the heading “Matters Associated with Siting - General Route”. Here, staff makes a number of incorrect, inconsistent and unreasonable assertions. In particular, staff states that “the OEB does not approve locations of transmission facilities or the general route of a transmission line in a Section 92 application” but then goes on to suggest that Windlectric should “provide the OEB with greater certainty on the general route.” Based on its flawed analysis, staff expresses the view that the Board’s normal practice of granting leave to construct in advance of final environmental assessment approval “should be reserved for circumstances in which the environmental assessment approval is expected shortly or appears to be non-contentious.” Staff then speculates that there may be complexities in Windlectric’s REA process that may warrant deferring the leave to construct decision. The Applicant strongly disagrees with staff’s comments.

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<sup>4</sup> Exhibit B, Tab 2, Schedule 1, p. 6.

19. First, there is no basis to support staff's suggestion that leave to construct should be withheld unless an environmental assessment approval is expected "shortly" and "appears to be non-contentious." This is not supported by the Board's prior practice, the OEB Act or the Filing Requirements. Moreover, staff have given no indication as to what might constitute a sufficiently short duration or how the Board might determine the degree to which an environmental assessment process appears to be contentious, particularly where the Board has already made it clear that environmental matters are beyond the scope of its jurisdiction in a leave to construct proceeding. It is also implicit in staff's suggested approach that a party who is opposed to a project needs only to create the appearance that the corresponding environmental assessment is contentious in order to cause a delay or prevent issuance of leave to construct. Such an approach would be untenable.
20. Second, we note that staff's comments are not supported by the Filing Requirements, which acknowledge that other approvals, such as environmental assessment approval, may be obtained after granting leave to construct.<sup>5</sup> In such circumstances, the Filing Requirements clarify that where such other approvals result in material changes to the project after the project has been reviewed by the Board, such as a routing change, the applicant will be required to advise the Board and, depending on the materiality of the change, the applicant may be required to satisfy the Board that the project is still in the public interest.<sup>6</sup> Although Windlectric does not anticipate future material changes to its Proposed Transmission Facilities, there is an established process for dealing with that possibility and the circumstances in the present proceeding do not warrant a deviation from this practice.
21. Third, we disagree with staff's view that the Board does not approve the locations of transmission facilities or routing in a Section 92 proceeding. Rather, this is one of the fundamental purposes of a Section 92 proceeding. This is why an application must be for a particular route and the application must include sufficient detail as to routing. This is also why the Filing Requirements specify that "any material deviations to the approved

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<sup>5</sup> Filing Requirements, section 4.2.2.

<sup>6</sup> Filing Requirements, section 4.4.3.1.

route following Board approval will require further review by the Board.”<sup>7</sup> The fact that the Board does approve the locations and routing of transmission facilities in a Section 92 proceeding is also consistent with the Board’s requirements with respect to identifying and providing notice to directly affected landowners in such a proceeding.

22. Finally, it is difficult to reconcile staff’s suggestion that the Board does not approve routing or transmission facility location with its suggestion that Windlectric should provide the OEB with greater certainty on the general route. These arguments are inconsistent. Moreover, Windlectric has provided highly detailed routing and location information in its Application and Board staff did not ask for clarification as to any aspect of the proposed locations or routing. The facility locations and routing are described in detail in Exhibit C, Tab 1, Schedule 1 with supporting maps at Exhibit C, Tab 2, Schedule 1.
23. Based on the foregoing, the Board should reject staff’s suggestion that leave to construct be withheld pending receipt of a final REA. Rather, the Board’s standard practice of making leave to construct conditional on all necessary permits and authorizations being acquired provides the appropriate mechanism for balancing staff’s concerns with the need for the timely consideration of the Application that is before the Board.

### **C. ISSUES RAISED BY APAI**

24. Consistent with and as a corollary to its general opposition to Windlectric’s Generation Project, the APAI opposes the Application. The APAI has raised a wide range of arguments relating to its concerns with virtually all aspects of the Application, each of which is addressed below. For the reasons that follow, it is Windlectric’s submission that the arguments raised by APAI - both in support of its position that the Application should be denied and in support of its alternative request that the Board impose various conditions of approval - are without merit.

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<sup>7</sup> Filing Requirements, section 4.4.3.1 (emphasis added).

**(a) Interests of Consumers with Respect to Price**

25. As indicated in the Application and in Windlectric's Argument-in-Chief,<sup>8</sup> the costs of the Proposed Transmission Facilities will be borne entirely by the Applicant and will not be passed on to consumers through transmission rates. APAI argues that the Application should be denied, or that conditions of approval should be imposed, because Windlectric has not demonstrated that it is able to protect consumers from the costs associated with the project.<sup>9</sup> There are several flaws with APAI's argument in this respect.
26. First, APAI has attempted to frame the Board's consideration of the interests of consumers with respect to price as a question of the Applicant's ability to bear the costs of the Generation Project, together with the Proposed Transmission Facilities. The manner in which APAI frames the issue is not consistent with the language of Section 96(2) and is not consistent with the approach the Board has taken in prior leave to construct proceedings. Rather, the question for the Board is whether the Proposed Transmission Facilities will have an impact on transmission rates in Ontario.
27. In its decision on an application for leave to construct by McLean's Mountain Wind LP, the Board explained that "where an applicant will be seeking to recover the costs of a project through rates, the Board typically considers the issue of "need" through the lens of price . . . (however) in this case, the evidence is that all of the costs of the Transmission Facilities will be borne by the applicant, and there will be no impact on the provincial uniform transmission rate."<sup>10</sup> In similar circumstances where a renewable generator has sought leave to construct transmission facilities for the purpose of connecting its generation facilities to the provincial grid, the Board has also determined this aspect of the Section 96(2) test by finding that such facilities will not have an adverse impact on electricity transmission rates in Ontario.<sup>11</sup> The evidence in Windlectric's Application is that the Proposed Transmission Facilities will, similarly, not have an adverse impact on electricity transmission rates in Ontario.

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<sup>8</sup> Exhibit B, Tab 2, Schedule 1, p. 7; Argument-in-Chief, para. 16.

<sup>9</sup> APAI Submissions, para. 9.

<sup>10</sup> Ontario Energy Board, Decision and Order, June 28, 2012, McLean's Mountain Wind LP (EB-2011-0394), p. 5.

<sup>11</sup> See Decision and Order, Bornish Wind LP, Kerwood Wind Inc. and Jericho Wind Inc. (EB-2013-0040/EB-2013-0041), November 12, 2013, p. 7; Decision and Order, Dufferin Wind Power Inc. (EB-2012-0365), July 5, 2013, p. 6; Decision and Order, South Kent Wind LP (EB-2011-0217), October 11, 2011, p. 8.

28. Second, APAI has considered the costs of the Generation Project together with the costs of the Proposed Transmission Facilities. The costs of the Generation Project are not relevant to this proceeding. Moreover, while in some areas of its argument APAI refers to “consumers”, in other areas of its argument APAI instead indicates that its concern is with the risk of various costs falling on the residents of Amherst Island and the public at large.<sup>12</sup> APAI has cast its net more broadly than is contemplated by the limited public interest test under Section 96(2) of the OEB Act.
29. Third, APAI argues that “it is appropriate to examine the financial viability of the Generation Project in order to assess whether there is likely to be an adverse impact on prices for consumers.”<sup>13</sup> In support of this proposition, APAI relies on the Board’s Decision and Order from an application by Union Gas Limited in EB-2008-0024. That application was brought under Section 90 of the OEB Act, which applies to gas pipelines. The limited public interest test under Section 96(2) of the OEB Act does not apply to applications brought under Section 90. Moreover, Union Gas is a rate-regulated gas distributor. The costs and feasibility of the pipeline project in EB-2008-0024 would have been relevant because the costs of that project would have ultimately been included in gas distribution rates that Union would be able to charge its customers. To protect ratepayers, the Board would therefore need to have been satisfied that the proposed expenditures on that project were required and appropriate relative to alternatives considered. In the present proceeding, the costs of the Proposed Transmission Facilities will be borne by Windlectric and will not be included in electricity transmission rates. As such, the referenced Decision and Order is not relevant.
30. Based on the foregoing, APAI’s assertions about the Applicant’s ability to bear the costs of the project are not relevant. Nevertheless, Windlectric notes that it and its shareholder are fully committed to the project, that through its parent company the Applicant has significant available resources and experience,<sup>14</sup> and that the project qualified for and obtained a FIT Contract from the Ontario Power Authority. Moreover, through the terms of the standard form of Generator Facility Connection Cost Recovery Agreement that

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<sup>12</sup> APAI Submissions, para. 11.

<sup>13</sup> APAI Submissions, para. 10.

<sup>14</sup> Exhibit B, Tab 2, Schedule 1, p. 1.

Windlectric expects to enter into with Hydro One, any costs incurred by Hydro One in providing the interconnection will be borne by Windlectric and will not affect the transmission rates charged by Hydro One. The Proposed Transmission Facilities will therefore have no impact on transmission rates in Ontario and, as such, the Applicant has satisfied this aspect of the public interest test under Section 96(2) of the OEB Act.

**(b) Interests of Consumers with Respect to Reliability and Quality of Electricity Service**

31. With respect to the need for the Board to consider the interests of consumers with respect to reliability and the quality of electricity service, APAI submits that leave to construct should not be granted until the Board has reviewed updated SIA and CIA reports, or that approval be conditional on those reports confirming that the Proposed Transmission Facilities will have no adverse impacts on reliability or the quality of electricity service. APAI's concerns are fully addressed by Part B(a) of these reply submissions.

**(c) Project Need**

32. As discussed at paragraph 15 of Windlectric's Argument-in-Chief, in Section 92 applications for non-rate-regulated transmitters that are connecting generation facilities to the IESO-controlled grid, the Board is typically satisfied as to the need for the transmission facilities where there is evidence of a power purchase agreement with the Ontario Power Authority (now the IESO). As such evidence of a FIT Contract has been submitted by Windlectric in the present proceeding and the Proposed Transmission Facilities will not be rate-regulated, the Applicant submits that need for the Proposed Transmission Facilities has been demonstrated. This is entirely consistent with Section 4.4.2.3 of the Filing Requirements.
33. APAI argues that in the circumstances of the present proceeding there is a heightened importance to demonstrating project need and that, consequently, the FIT Contract is not sufficient evidence.<sup>15</sup> According to APAI, the need for further evidence arises from its claim that Windlectric is not able to bear the costs of the Generation Project and its speculation that Windlectric will not be able to achieve commercial operation in

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<sup>15</sup> APAI Submissions, para. 17.

accordance with the FIT Contract.<sup>16</sup> Windlectric strongly disagrees with APAI's submissions with respect to project need and urges the Board to determine this issue in a manner consistent with its prior decisions and the Filing Requirements.

34. To support its view that there is no need for the project, APAI refers to the Board's decision in an application for leave to construct by Goldcorp.<sup>17</sup> In the Goldcorp decision, while the Board stated that it would be unlikely to approve a project for which there was no demonstrable need, the Board found that this was not the case for Goldcorp and that the evidence provided by Goldcorp regarding its energy requirements was sufficient.<sup>18</sup> Goldcorp needed the transmission facilities to meet its increasing demand as an electricity load at certain of its mining operations, which demand could not otherwise be met by Hydro One facilities. As contemplated by Section 4.4.2.3 of the filing requirements, the nature of the evidence required to demonstrate need will differ based on whether the application is for facilities to connect a generator to the grid or for facilities to connect or supply a load customer from the grid. Where the facilities are for purposes of connecting a generator, need is sufficiently demonstrated by evidence of a valid contract for the supply of renewable generation. Given that a generator in Ontario, including a renewable energy generator, has a statutory right to connect its facility to the grid,<sup>19</sup> it is entirely appropriate that the Board regard a valid FIT Contract as sufficient evidence in this regard.
35. APAI's argument that the need for the project has not been sufficiently demonstrated rests largely on two flawed claims made by APAI - that Windlectric's FIT Contract is "almost certain to be cancelled" and that "the provincial government's policy is to reject time extensions for FIT contracts".<sup>20</sup>
36. In support of its statement that Windlectric's FIT Contract is "almost certain to be cancelled", APAI makes lengthy submissions relating to the project schedule and asserts that if commercial operation is not achieved by August 2015 the IESO will terminate the

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<sup>16</sup> APAI Submissions, para. 17.

<sup>17</sup> See footnote 16 at para 18 of APAI Submissions.

<sup>18</sup> Decision and Order, Goldcorp (EB-2011-0106), July 20, 2011 at p. 7.

<sup>19</sup> See ss. 25.36 and 26 of the *Electricity Act*.

<sup>20</sup> APAI Submissions, paras 20 and 22.

FIT Contract.<sup>21</sup> However, this date is subject to any extension that is granted for reason of force majeure. Moreover, it is the IESO's practice to provide day-for-day relief for the length of appeals to the Environmental Review Tribunal.<sup>22</sup> In addition, while the FIT Contract provides the IESO with a right of termination as of the date that is 18 months following the Milestone Date for Commercial Operation, subject to any extensions of up to 24 months for reason of force majeure, the IESO does not have an obligation to do so.

37. With one exception, Windlectric also disputes APAI's submissions with respect to the Applicant's project schedule. Windlectric agrees with APAI's submission that "applicants will normally be in the best position to provide information as to a project's construction schedule."<sup>23</sup> Windlectric's current expectation for the project schedule is that construction of the Proposed Transmission Facilities will commence in early 2016 and that commercial operation of the Generation Project will be achieved by the end of 2016, as set out in the Argument-in-Chief at paragraphs 50-54. This is a realistic and reasonable project schedule which accounts for the various factors discussed in APAI's submissions, including at paragraph 32 thereof, as applicable, and also allows for flexibility to address further unexpected delays that may arise without jeopardizing the Applicant's ability to meet the latest deadline for commercial operation under the FIT Contract of August 2017.
38. In support of its claim that "the provincial government's policy is to reject time extensions for FIT contracts",<sup>24</sup> APAI cites a statement made in the Legislature. However, the referenced statement was made by a member of the Progressive Conservative Party of Ontario.<sup>25</sup> Moreover, the referenced statement made in the Legislature consists of this member of the opposition reading out a petition made to the Legislature by two individual Ontario residents. Given the nature of the statement and who it was made by, it is misleading and irresponsible for APAI to suggest to the Board

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<sup>21</sup> APAI Submissions, para 20.

<sup>22</sup> Letter from J. Butler to APAI dated January 26, 2015 (filed by APAI February 20, 2015 as APAI\_IRR\_EVD\_Board\_Staff\_2015.01.26 Butler (Campbell) IESO to Large re Windlectric with Attachment re FIT Contracts\_20150220)

<sup>23</sup> APAI Submissions, p. 10.

<sup>24</sup> APAI Submissions, para 22.

<sup>25</sup> See [http://www.ontla.on.ca/web/members/members\\_detail.do?locale=en&ID=2116](http://www.ontla.on.ca/web/members/members_detail.do?locale=en&ID=2116)

that this is a statement of provincial government policy. In the Applicant's view, this is characteristic of the quality of much of the "evidence" filed and relied upon by APAI throughout this proceeding. In any event, the manner in which FIT contracts are managed is a matter that is within the discretion of the IESO. While the Minister may have the ability to issue directives to limit the discretion of the IESO, Windlectric is not aware of any Ministerial Directives having been issued which articulate a government policy relating to the IESO's FIT contract management practices, particularly with respect to extensions or terminations. As such, the "provincial government policy" that APAI relies upon for its argument does not exist. Moreover, it is not for the Board to speculate as to the IESO's future FIT Contract management practices.

39. Based on the foregoing, APAI's claims that the FIT Contract is "almost certain to be cancelled" and that based on a clear government policy the IESO will be required to terminate Windlectric's FIT Contract if commercial operation is not achieved by August 2015, are unsupported and without merit. Rather, Windlectric has provided evidence of its FIT Contract and, given that the Proposed Transmission Facilities will not be rate-regulated, the need for the Proposed Transmission Facilities has therefore been demonstrated in a manner consistent with the expectations set out at Section 4.4.2.3 of the Filing Requirements and in prior Section 92 proceedings before the Board.

**(d) Consistency with Ontario Government Policies with Respect to Renewables**

40. APAI argues that the Proposed Transmission Facilities are not consistent with the policies of the Government of Ontario with respect to the use of renewable energy sources. APAI's submissions on this point are based on its claims that the Generation Project is not viable and may not reach commercial operation as required under the FIT Contract. APAI's speculation as to the viability of the Generation Project and ability to achieve commercial operation in a manner that is acceptable to the IESO (in its capacity as the former OPA) is not relevant to this aspect of the limited public interest test under Section 96(2)2 of the OEB Act.
41. Rather, in proceedings where the Board has considered applications for leave to construct transmission facilities that are needed to connect renewable generation projects, for

which FIT contracts have been awarded, the Board has repeatedly found that such circumstances sufficiently demonstrate that the proposed transmission facilities would be consistent with the policies of the Government of Ontario favouring the promotion of the use of renewable energy sources. For example, in a recent decision on an application by Suncor, the Board found that “the OPA, administering the FIT program as required by the Government of Ontario, awarded a FIT contract to Suncor. This leads the Board to the conclusion that the approval of the proposed Transmission Facilities would be consistent with the policies of the Government of Ontario favouring the promotion of the use of renewable energy sources.”<sup>26</sup>

**(e) Forms of Land Agreement**

42. APAI argues that Windlectric’s forms of land agreement do not comply with the Board’s requirements and, therefore, that leave to construct should be denied. In particular, APAI argues that leave to construct should not be granted unless and until Windlectric’s forms of land agreement comply with Appendix ‘A’ of the Filing Requirements by including clauses pertaining to independent legal advice (“**ILA**”) and decommissioning. As Board staff notes in its March 31, 2015 supplemental comments, decommissioning is generally addressed in Windlectric’s forms of land agreements and, with the exception of ILA, the forms of land agreement as filed contain all of the elements set out at Appendix ‘A’ of the Filing Requirements. We further note that the issue of ILA was not previously raised by APAI or any party during the course of the proceeding. For the reasons that follow, Windlectric disagrees with APAI’s submissions relating to Section 97.
43. Pursuant to Section 97, the Board may approve a standard form of agreement that represents the initial offering to the affected landowner. However, the parties are free to negotiate whatever terms they believe to be necessary to protect their specific interests. As such, the approved forms of agreement do not necessarily reflect the terms of the final agreements between the parties.<sup>27</sup>

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<sup>26</sup> Decision and Order, Suncor Energy Products Inc. (EB-2014-0022), p. 5; See also Decision and Order, Jericho Wind Inc. (EB-2013-0361), p. 7; See also Decision and Order, Bornish Wind, Kerwood Wind and Jericho Wind (EB-2013-0040/0041), p. 8.

<sup>27</sup> Ontario Energy Board, Decision and Order, EB-2006-0305, June 1, 2007, p. 10

44. Section 97 itself does not require forms of agreement to include any particular clauses or to address any particular matters. Rather, the Board has discretion to approve a form of agreement and the Board's Filing Requirements do not limit this statutory discretion. This is acknowledged in the preamble to Appendix 'A' of the Filing Requirements, which says that "adhering to this form of agreement does not limit the Board's discretion to either approve or not approve a form of agreement submitted in a proceeding."
45. Windlectric has already entered into agreements with each of the landowners that are directly affected by the Proposed Transmission Facilities. Those agreements were offered to, negotiated with and executed by the relevant landowners several years before the Board amended its Filing Requirements in July 2014 to include Appendix 'A' and the obligation to offer forms of agreement that include the provisions listed therein. In fact, the agreements were offered to the relevant landowners by the original developer from which the project was acquired by Windlectric and, when Windlectric acquired the project, the relevant agreements were assigned to it from the prior developer.
46. Although each of the landowners with whom Windlectric has entered into a land agreement was served with Notice in this proceeding, which Notice expressly advised that the forms of land agreement would be at issue, none of these landowners intervened or filed letters of comment or have otherwise expressed any concerns with the forms of land agreement offered to them in respect of the Proposed Transmission Facilities.
47. As indicated at paragraphs 55-57 of Windlectric's Argument-in-Chief, the issue of decommissioning is addressed in a comprehensive manner through the REA process. Moreover, the Applicant confirmed in response to APAI Interrogatory #4 that the costs of decommissioning the transmission facilities will be the responsibility of the Applicant (or the owner of the transmission facilities if the Applicant is not the owner at such time as the facilities are decommissioned). It is also important to note that the agreements currently in place with landowners are option agreements. Upon exercising these options in the near future, Windlectric will prepare final lease or easement agreements with the relevant landowners on terms consistent with those set out in each of the option agreements. To the extent the option agreements do not already address the issue of

decommissioning, Windlectric is committed to reflecting in the terms of the final lease and easement agreements that the costs of decommissioning the transmission facilities will be the responsibility of the project owner and not of the landowner.

48. Based on the foregoing, the Board should exercise its discretion to approve the forms of land agreement as filed regardless of whether they include ILA and decommissioning clauses that are consistent with Appendix 'A' of the amended Filing Requirements.

**(f) Land Rights for the Project Substation Property**

49. In its Argument-in-Chief, Windlectric indicated that it has secured the land rights that it requires for all privately owned properties that are directly affected by the Proposed Transmission Facility locations and routing. However, Windlectric also acknowledged that it required an amendment to the option agreement that it holds for the property upon which the Project Substation is to be located and indicated that such amendment would be executed shortly. The amendment was executed by the relevant landowner effective March 15, 2015 and was received by Windlectric on April 1, 2015. Accordingly, APAI's submissions on this aspect of the Application are moot. Windlectric has secured all of the necessary private land rights that it requires for purposes of the Proposed Transmission Facilities. In addition, as indicated in its Argument-in-Chief, Windlectric has statutory rights under the *Electricity Act* in respect of the two locations where its Proposed Transmission Facilities will cross public roads. The Applicant has also set out in its evidence the process it has commenced and which it will continue to follow so as to secure the rights it needs for the submarine portion of the Transmission Line from the Ministry of Natural Resources.

**(g) Cost Responsibility for Burying Portions of the Transmission Line**

50. APAI raises concerns in respect of the two locations where the Transmission Line will cross Hydro One's existing distribution facilities perpendicularly. In particular, APAI suggests that these crossings pose a safety hazard and that Windlectric should bear the costs of burying either the Transmission Line or Hydro One's distribution facilities. As indicated in Exhibit C, Tab 2, Schedule 1, Figure 5(a), the overhead portion of the Transmission Line on Amherst Island will cross Hydro One's distribution facilities just

north of Front Road and as shown in Exhibit C, Tab 2, Schedule 1, Figure 5(b) the underground portion of the Transmission Line on the mainland will cross Hydro One's distribution facilities just south of Bath Road/Hwy 33 near the cable landing point. As such, Windlectric already intends to bear the costs of burying the Transmission Line at one of the two points where its facilities will cross Hydro One's existing distribution facilities. At the other crossing point, on Amherst Island, the Transmission Line will be constructed so as to meet Hydro One's standard clearances, which as indicated by Hydro One in EB-2014-0022 meet or exceed the relevant clearances prescribed by the Canadian Standards Association.<sup>28</sup> As such, this arrangement poses no safety hazards and Hydro One has not raised any concerns to Windlectric with respect to these crossings.

#### **D. CONCLUSION**

51. The Proposed Transmission Facilities are in the public interest in accordance with Subsection 96 of the OEB Act. The Proposed Transmission Facilities will not affect the interests of consumers with respect to prices because they will be paid for entirely by the Applicant and will have no impact on transmission rates in Ontario. As demonstrated by the Final SIA and CIA reports filed by the Applicant, the proposed transmission facilities will not adversely impact the interests of consumers with respect to reliability or the quality of electricity service. Windlectric anticipates that shortly after filing these reply submissions it will receive confirmation from each of the IESO and Hydro One that these findings continue to be valid despite minor technical changes made since the Final SIA and CIA reports were issued. Moreover, the Proposed Transmission Facilities are consistent with the policies of the Government of Ontario with respect to the promotion of the use of renewable energy sources.
52. The routing and locations for the Proposed Transmission Facilities are appropriate and, for the reasons set out above, the forms of land agreement filed by the Applicant meet the requirements under Section 97 of the OEB Act. Moreover, no party has opposed Windlectric's request for approval pursuant to Section 101 of the OEB Act for authority

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<sup>28</sup> Decision and Order, Suncor Energy Products Inc. (EB-2014-0022) dated February 26, 2015, p. 15.

to construct portions of the Proposed Transmission Facilities upon, under or over a highway, utility line or ditch.

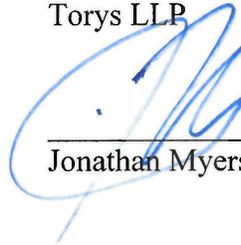
53. Accordingly, for the reasons set out herein, we respectfully request that the Board grant leave to construct to the Applicant in respect of the Proposed Transmission Facilities pursuant to Section 92 of the OEB Act, along with such other relief as requested in the Application.

All of which is respectfully submitted this 8th day of April, 2015.

**WINDLECTRIC INC.**

By its counsel

Torys LLP



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Jonathan Myers